



County of Los Angeles **CHIEF ADMINISTRATIVE OFFICE**

713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://cao.co.la.ca.us>

DAVID E. JANSSEN
Chief Administrative Officer

July 8, 2003

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From: David E. Janssen
Chief Administrative Officer

STATE LEGISLATIVE UPDATE

Status of Workers' Compensation Reform Legislation

Two County-supported workers' compensation bills, AB 1579 (Cogdill) and SB 354 (Speier), were amended on July 2, 2003 to incorporate numerous workers' compensation reforms. These amended bills are likely to become part of conference committee discussions on workers' compensation reform.

County-supported AB 1579 (Cogdill), which previously prohibited physician referrals to family owned outpatient surgical services and suppliers in workers' compensation cases, was substantially amended on July 2, 2003 to become the major Republican vehicle for workers' compensation reform. Among its provisions are:

- Requires the Division of Workers' Compensation (DWC) to develop and adopt diagnostic, treatment and utilization guidelines for medical treatment in workers' compensation cases.
- Allows employers to develop medical utilization guidelines and submit them to the DWC for accreditation.
- Prohibits referral to outpatient surgical centers in which a physician has a financial interest.

- Makes the provision of rehabilitation programs voluntary for employers.
- Requires training and certification for physicians treating and evaluating workers' compensation cases and for disability evaluators.
- Makes alternate dispute resolution available to all private employers.
- Reduces the scope and application of the current mandate for liberal construction and tightens the burden of proof for finding that cumulative trauma and psychiatric injuries are work related.
- Requires permanent disability evaluations and ratings to be based on objective medical findings.
- Provides that inmates who are covered for workers' compensation benefits are exempted from the minimum temporary disability rate of \$126 per week.
- Extends the period of employer medical control to 120 days from the current 30 days.
- Provides for the establishment of an independent review process to resolve workers' compensation health care disputes.
- Requires the dispensing of generic drugs on workers' compensation cases.
- Makes provisions for second opinions to be obtained from a physician who is a member of the health care organization (HCO) when the employer and employee have agreed to utilize an HCO.
- Requires payment of medical bills within 45 days.
- Repeals the prospective settlement of rehab cases.
- Requires the official workers' compensation medical fee schedule to be based on the Medicare fee schedule.
- Provides liability for permanent disability to be reduced by apportionment to non-work related factors or to prior permanent disability ratings.
- Increases the penalty for unreasonable delay of benefits to 25%, but it applies only to the delayed payment and not to the entire category of benefits. Also establishes a one year statute of limitations on claiming a penalty for delayed benefits.

CAO Risk Management recommends that the County continue to support AB 1579. The total potential savings/cost avoidance to the County resulting from AB 1579 could exceed \$60 million per year once all of the reform elements take effect. Based on existing Board policy to support reforms in workers' compensation law which would result in a more efficient, effective and cost effective system, **the County will continue to support AB 1579.**

Although AB 1579 is a comprehensive reform bill, CAO Risk Management recommends the following amendments to make it even more effective:

- Expand the alternate dispute resolution proposal to include public as well as private employers.
- Repeal the presumption of correctness under Labor Code Section 4062.9 for pre-designated physicians. This presumption creates potential conflict with the utilization review and independent medical review provisions of this bill.
- Repeal Labor Code Section 4702 (a) (6) that will otherwise take effect on January 1, 2004. This section provides that death benefits on cases with no dependents shall be paid to the deceased employee's estate. It was added by AB 749 last year and is in direct conflict with the State Constitution that provides death benefits are paid to the State Subsequent Injuries Fund when there are no dependents.
- Suspend the future benefit increases contained in AB 749 until the reform established by this bill has taken effect and there is evidence that workers' compensation costs are under control and the insurance industry has been stabilized. A "trigger," such as an increase in jobs in California over a six month period, should be used to determine the start up of the benefit increases.
- Provide legislative intent language that there will be no new or expanded presumptions and no expansion of tax free, full salary benefits in the public sector.

AB 1579 is scheduled to be heard in the Senate Labor and Industrial Relations Committee on July 9, 2003. Support and opposition to the amended version of AB 1579 are unavailable at this time.

County-supported SB 354 (Speier), which previously increased fines for workers' compensation fraud, limited chiropractic care to 15 visits per year, and prohibited physician referrals to family owned surgical outpatient centers, was amended on July 2, 2003 to add the requirement that the state develop medical utilization guidelines for use in the workers' compensation system and to establish an independent medical review process.

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CAO Risk Management recommends continued support of SB 354. Based on current Board policy to support legislation that would result in reforms in workers' compensation which would result in an efficient, effective and cost effective program, **the County will support SB 354.**

SB 354 is scheduled for hearing in the Assembly Committee on Insurance on July 9, 2003. Support and opposition to SB 354, as amended, are not available at this time.

We will continue to keep you advised.

DEJ:GK
MAL:DdN:ib:

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